SUPREME COURT, U. S.
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in the

Supreme Court

of the

United States

October Term, 1969

No. 367

EDMOR PROPERTIES, INC., A Florida Corporation,
Petitioner,

vs.

METROPOLITAN DADE COUNTY, FLORIDA, A Governmental Subdivision of The State of Florida,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

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MIAMI REVIEW — 371-4853 — 377-3721

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In the Supreme Court of the United States

October Term, 1969

No.

EDMOR PROPERTIES, INC., A Florida Corporation,
Petitioner,

vs.

METROPOLITAN DADE COUNTY, FLORIDA, A Governmental Subdivision of The State of Florida,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Petitioner prays that a writ of certiorari issue to review the judgment of the District Court of Appeal of Florida, Third District, filed December 17, 1968, and affirmed by the denial of Petition for Writ of Certiorari to the Supreme Court of Florida on March 27, 1969.

CITATIONS TO OPINIONS BELOW

Final Judgment was filed in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, on February 21, 1968, and recorded in Circuit Court Minute Book No. 918, at Page 289 on February 23, 1968.

The judgment of affirmance of the District Court of Appeal of Florida, Third District was filed December 17, 1968, is recorded in Minute Book 29 at Page 12, and is recited in Appendix A hereto, *infra*, p. App. 1. Rehearing was denied on January 17, 1969, recorded at Minute Book 29 at Page 134, and is recited in Appendix B hereto, *infra*, p. App. 3. The opinion of the District Court of Appeal, Third District, is unreported. The Petition for Writ of Certiorari was denied by the Supreme Court of Florida on March 27, 1969, is unreported and recited in Appendix E hereto, *infra*, p. App. 17.

JURISDICTION

The judgment of the District Court of Appeal of Florida, Third District is dated December 13, 1968, and was filed on December 17, 1968. An order denying rehearing was entered on January 17, 1969. The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257(3) because a title, right, privilege or immunity claimed under the Constitution or Statutes of the United States was denied by the District Court of Appeal of Florida, Third District. Jurisdiction is also invoked under Rule 19(1)(a) of the Rules of the Supreme Court of the United States, adopted June 12, 1967, effective October 2, 1967, and as amended to June 20, 1968, because a State Court had decided a federal question of substance in a way probably not in accord with applicable decisions of this Court.

QUESTIONS PRESENTED FOR REVIEW

I.

WHETHER IT IS A VIOLATION OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW TO INCLUDE THE PETITIONER'S VACANT DWELLING UNITS WITHIN A PARTICULAR TAXABLE CLASS, AND TO IMPRESS A CHARGE UPON THESE PROPERTIES, WHEN, IN FACT, THESE VACANT UNITS DO NOT BEAR ANY RELATIONSHIP TO, AND ARE NOT SIMILARLY SITUATED WITH, OTHER OCCUPIED UNITS WHICH CONSTITUTE THE TAXABLE CLASS, AND WHEN THEY CANNOT AND DO NOT RECEIVE ANY OF THE BENEFITS FOR WHICH THE CHARGE IS IMPOSED.

II.

WHETHER A COUNTY CAN IMPOSE A SERVICE CHARGE IN THE NATURE OF A SPECIAL ASSESSMENT UPON HOMEOWNERS FOR A WASTE COLLECTION SERVICE WITHOUT FIRST FOLLOWING A PROCEDURE BY WHICH THE HOMEOWNERS WOULD HAVE AN OPPORTUNITY TO BE HEARD AS TO WHETHER THEY DESIRED THE SERVICE AND ITS CONCOMITANT CHARGE.

CONSTITUTIONAL, STATUTORY AND RULES PROVISIONS INVOLVED

Constitution of the United States—Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Title 28, United States Code, Rules of the Supreme Court of the United States, Rule 19. Considerations governing review on certiorari:

> 1. (a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions in this Court.

Home Rule Charter of Dade County, Florida, Section 1.01. Powers.

> (A) (9) Provide and regulate or permit municipalities to provide and regulate waste and sewage collection and disposal and water supply and conservation programs.
>
> (A)(11) By ordinance, establish, merge, and abolish special purpose districts within which may be provided police and fire protection, beach erosion control,

> recreation facilities, water, streets, sidewalks, street lighting, waste and sewage collection and disposal, drainage, and other essential facilities and services. All county funds for such districts shall be provided by service charges, special assessments, or general tax levies within such districts only. The Board of County Commissions shall be the governing body of all such districts and when acting as such governing body shall have the same jurisdiction and powers as when acting as the Board.

Code of Metropolitan Dade County, Florida, Chapter 15, Garbage and Trash:

Section 15-3. Prima facie evidence of accumulation of waste.

> The fact that any residential unit or any commercial establishment located in any waste district is occupied shall be prima facie evidence that garbage or other refuse is being produced or accumulated upon such premises. However, temporary residential vacancy regardless of duration, shall not authorize a refund or excuse the nonpayment of any waste fee. Waste fees shall be chargeable on new residential units immediately, following the initial connection of permanent electric service or whenever the first waste is picked up from such unit by the county, whichever shall occur first.

Code of Metropolitan Dade County, Florida, Chapter 18, Improvement Districts, Section 18-3 is included in Appendix C, *infra*, p. App. 5.

STATEMENT OF THE CASE

The Petitioner is a Florida corporation which owns numerous duplexes and single-family dwelling units in Dade County, Florida. The Respondent, Metropolitan Dade County, operates under a "Home Rule Charter" granted by the Florida Legislature. Pursuant to this Charter, a Board of County Commissioners is the legislative and governing body of the county, and has the power, among others, to establish special purpose districts and to provide and regulate waste collection.

Under the authority of this Charter, the Board promulgated Chapter 15, entitled "Garbage and Trash." Other than for commercial establishments (which does not include duplexes), all single-family residences, as well as duplexes, must accept and use the county waste collection service. For this service, a "waste fee" is exacted and impressed in accordance with Section 15-3, *supra.*

Petitioner filed a complaint in the Circuit Court alleging that oftentimes its duplexes and single-family dwelling units were vacant for extended periods of time; yet, in spite of their vacancy, and non-accumulation of garbage, it was still being charged for waste collection ("temporary vacancy regardless of duration, shall not authorized a refund or excuse the nonpayment of any waste fee").

Petitioner complained that it was being assessed a fee but receiving no benefit; that its unoccupied property was unreasonably classified with property which had occupants on it, which did produce garbage and which could avail itself of the waste collection service; and that the County was without power to impose a mandatory fee without first establishing a special purpose district in accordance with the Charter.

Petitioner, therefore, asserted that it was being deprived of its property without due process of law, that it was being denied the equal protection of the law, and that there was never a special purpose district formed which, prior to formation, would have given Petitioner an opportunity to be heard upon its desire to be specially assessed for waste collection.

HOW THE FEDERAL QUESTIONS WERE RAISED

Both questions were raised in the Complaint filed in the Circuit Court in and for Dade County, Florida. Moreover, the Circuit Court, in its Final Judgment, ruled directly on both points. Thereafter, they were raised by assignment of error and argument in the District Court of Appeal of Florida, Third District. They were also raised in the Petition for Writ of Certiorari to the Supreme Court of Florida.

The Circuit Court found as follows upon the questions raised:

(1) "Nor, does the Court find any merit in the contention that Metro can only assess such charges after the creation of a special taxing district.***"

(2) "Since the availability of garbage and waste collection and disposal is provided for tenanted and occupied property, as well as for untenanted and unoccupied property, there is no denial of equal protection, and the mechanics of the ordinance satisfy the due process clause of the constitution. ***"

A copy of the entire judgment is recited in Appendix D, *infra*, p. App. 15.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

QUESTION I.

WHETHER IT IS A VIOLATION OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW TO INCLUDE THE PETITIONER'S VACANT DWELLING UNITS WITHIN A PARTICULAR TAXABLE CLASS, AND TO IMPRESS A CHARGE UPON THESE PROPERTIES, WHEN, IN FACT, THESE VACANT UNITS DO NOT BEAR ANY RELATIONSHIP TO, AND ARE NOT SIMILARLY SITUATED WITH, OTHER OCCUPIED UNITS WHICH CONSTITUTE THE TAXABLE CLASS, AND WHEN THEY CANNOT AND DO NOT RECEIVE ANY OF THE BENEFITS FOR WHICH THE CHARGE IS IMPOSED.

The Petitioner, like numerous other individuals in Dade County, Florida, who rent dwelling units to others, is faced with the problem of vacant and untenanted units. Not only do these units fail to produce income, they fail to produce garbage and are not otherwise in need of a waste collection service. Yet, because of the wording of Section 15-3, it does not matter how long a dwelling is unoccupied ("regardless of duration"). There is no provision for permitting the Petitioner to notify the County that its trucks need not stop at a particular dwelling because it does not, and cannot, utilize the service.

This is unlike the situation of sewage disposal by pipeline. It would be impractical, and very expensive, to lay pipes in a tic-tac-toe manner, connecting one house and not another. Here, however, Petitioner merely wishes to be able to call the waste department, or, even more

simply, and by example, plant a "red flag" out in front of an unoccupied dwelling to signify vacancy so the truck can roll "right-on-by." The Third District Court of Appeal of Florida, Third District has twice characterized the mandatory fee as a special assessment lien, and not a tax. *Turner v. State*, 168 So.2d 192 (Fla.App. 1964); *Gleason v. Dade County*, 174 So.2d 466 (Fla.App. 1965). Supposedly, it is levied for service. But a dwelling, vacant for a year or two years, or more, is conclusively unable to avail itself of the service. Just because a piece of property has a house on it, it must pay for the "service."

Nor is this a question of sanitation. If 15,000 houses produce 15,000 quantities of garbage, and each quantity is collected, and charged accordingly, there is no health danger presented by those premises which have no accumulation of garbage to collect. The Petitioner, at times, is being included in a class of taxpayers to which, at times, it does not belong; and its inclusion is solely to help defray the expense of the benefit enjoyed only by occupied dwelling units.

Because of the ease with which a rolling truck can be notified not to stop, the Petitioner, and others similarly situated, can enter and leave the taxable class without causing any difficulty, expense or deficiency of service to those who properly can avail themselves of it.

The prerequisite of benefits to valid special assessments is a fundamental rule. In *Myles Salt Company v. New Iberia and St. Mary Drainage District*, 239 U.S. 478, 36 S.Ct. 204, 60 L.Ed. 392 (1916), this Court held:

> "It is to be remembered that a drainage district has the special purpose of the improvement of particular property and when it is so formed to include property which is not and cannot be bene-

> fited directly or indirectly, including it only that it may pay for the benefit of other property, there is an abuse of power and an act of confiscation.***"
> *Id.*, 239 U.S. at 481; 36 S.Ct. at 206.

See also *Village of Norwood v. Baker*, 172 U.S. 269, 19 S.Ct. 187, 43 L.Ed. 448 (1898); *Chesebro v. Los Angeles County Flood Control District*, 306 U.S. 459, 59 S.Ct. 622, 83 L.Ed. 921 (1939).

Under the Dade County ordinance no excuse for nonpayment is permitted. Even if a dwelling is built and never occupied, it must still pay for garbage collection. It is believed that unoccupied units should be exempt from the assessment proportionate to their period of vacancy with a practical limit on the minimum period of vacancy. In this manner, the assessment will not palpably and grossly exceed the benefits which it was designed to yield. *Roberts v. Richland Irrigation District*, 289 U.S. 71, 53 S.Ct. 519, 77 L.Ed. 1038 (1933).

QUESTION II.

WHETHER A COUNTY CAN IMPOSE A SERVICE CHARGE IN THE NATURE OF A SPECIAL ASSESSMENT UPON HOMEOWNERS FOR A WASTE COLLECTION SERVICE WITHOUT FIRST FOLLOWING A PROCEDURE BY WHICH THE HOMEOWNERS WOULD HAVE AN OPPORTUNITY TO BE HEARD AS TO WHETHER THEY DESIRED THE SERVICE AND ITS CONCOMITANT CHARGE.

The initial portion of Section 1.01 (A) (11) of the Metropolitan Charter states that an example of a special purpose district is a district for waste collection. Following that example, the section proceeds to require that:

> "(A) (11) County funds for such districts shall be provided by service charges, special assessments, or general tax levies within such districts only. ***"

Moreover, Section 15-3 of the Metropolitan Code sets forth the criterion for assessment within "any waste district."

The Charter and Code, it is believed, anticipated that garbage collection was to be performed, and the assessment levied, within some form of "waste district" (Code Section 15-3) or "special purpose district" (Charter Section 1.01(A)(11)). Indeed, Section 18-3 of the Code establishes elaborate procedures and guidelines for assuring homeowners "notice and hearing" before the formation of a special purpose district, which would, thereafter, impose a charge upon those within the district.

An essential, constitutional, prerequisite to the validity of a special assessment is that the individuals to be assessed have an opportunity to be heard upon whether they desire to be assessed. *Walker v. City of Hutchinson*, 352 U.S. 112, 77 S.Ct. 200, 1 L.Ed.2d 178 (1956); *Browning v. Hooper*, 269 U.S. 396, 405, 46 S.Ct. 141, 143, 70 L.Ed. 330 (1926). In the case at bar, this is particularly important because of the availability throughout the County, of various, private collection services.

If they could provide faster, cheaper and more efficent service, Dade County citizens may well have rejected the county's offer. In any event, they were denied a public hearing whereat the merits of private collection versus public collection could be weighed.

Interestingly, a public hearing on the desirability of a special assessment is only available incident to the formation of a special purpose district. It was this type of district which was contemplated to be the administering agent for waste collection, but it was never formed; accordingly, hearings were never held and a vote of the citizenry was never taken.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petition for Writ of Certiorari should be granted so that the record may be reviewed in its entirety.

ALFRED M. CARVAJAL
and GEORGE D. GOLD
409 Seybold Building
Miami, Florida 33132
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Writ of Certiorari to the District Court of Appeal of Florida, Third District, was mailed to the HONORABLE THOMAS BRITTON, County Attorney, Dade County Courthouse, Miami, Florida, this 2nd day of July, 1969.

Alfred M. Carvajal

ALFRED M. CARVAJAL

APPENDIX

APPENDIX A

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

JULY TERM, A.D. 1968

FRIDAY, DECEMBER 13, 1968

CASE NO. 68-349

EDMOR PROPERTIES, INC., a Florida corporation,
Appellant,

vs.

METROPOLITAN DADE COUNTY, FLORIDA,
a governmental sub-division of the State of Florida,
Appellees.

Opinion filed December 17, 1968.

An Appeal from the Circuit Court for Dade County,

Martin Sack, Judge.

Carvajal & Lieberman and George D. Gold, for appellant.

Thomas C. Britton, County Attorney, and H. Jackson Dorney, Assistant County Attorney, for appellees.

Before CHARLES CARROLL, C.J., and HENDRY and SWANN, JJ.

PER CURIAM.

Affirmed.

APPENDIX B

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

JANUARY TERM, A.D. 1969

FRIDAY, JANUARY 17, 1969

CASE NO. 68-349

EDMOR PROPERTIES, INC., a Florida corporation,
Appellant,

vs.

METROPOLITAN DADE COUNTY, FLORIDA,
a governmental sub-division of the State of Florida,
Appellee.

Counsel for appellant having filed in this cause petition for rehearing, and same having been considered by the court which determined the cause, it is ordered that said petition be and it is hereby denied.

A True Copy

ATTEST:

WILLIAM L. CARTER
Clerk District Court of Appeal,
Third District

cc: Pozen, Gold & Gold
H. Jackson Dorney
/h

(THE MANDATE IN THE ABOVE STYLED CAUSE HAS TODAY BEEN ISSUED AND MAILED TO THE CLERK OF THE CIRCUIT COURT IN AND FOR DADE COUNTY, FLORIDA)

APPENDIX C

Sec. 18-3. Proceedings for creation and establishment of districts.

The proceedings for the creation and establishment of a district under the provisions of this article shall be as follows:

(a) *Petition.* There shall be filed with the clerk of the board a petition requesting the creation and establishment of a special taxing district under the provisions of this article, signed by the planning director or by fifty per centum (50%) of the resident owners of property embraced within the proposed district. Opposite each such signature of owners of property there shall be inserted his post office address and a brief reference to the property within the proposed district which is owned by such signer, and such reference shall be sufficient to identify any property involved and shall set forth the folio number of the county tax bill covering such property. For the purposes of any such petition of owners of property, the rights of mortgagees and lienors shall not be considered and the signature of any person holding a fee interest in the property shall be sufficient, and either the signature of the husband or the wife shall be sufficient in cases where the property is owned by both husband and wife. In addition to the foregoing such petition shall also contain and set forth the following:

(1) The boundaries or other description sufficient to identify the property embraced in the proposed district, together with a survey sketch showing the location of the proposed district, and

(2) A brief description of the project requested to be constructed, acquired, reconstructed or installed.

(b) *Certification of petition.* Upon receipt of any such petition, the clerk of the board shall transmit a copy thereof to the county manager, who shall examine the petition and file a written report with the clerk at the earliest practicable date.

(c) *Investigation by county manager.* If the county manager finds that the petition has been properly presented in accordance with the requirements of this article, he shall cause to be made under his supervision and direction such investigations, surveys, plans and specifications as may be necessary to enable him to compile and file with the board a written report and recommendations setting forth the following data and information:

(1) The boundaries or other description sufficient to identify the property to be embraced in the proposed district as set forth in the petition, together with any recommendations as to any territory within the proposed district that should be excluded from the district because of the dispropor-

tionate cost of providing for such territory the project petitioned for, or for any other reason, and any recommendations for the inclusion of any additional territory within the proposed district;

(2) The location of the project to be constructed, acquired, reconstructed or installed within the proposed district;

(3) An estimate of the cost of such project;

(4) An estimate of the annual expense to be borne by the district or the county of maintaining, repairing and operating such project, and his recommendations concerning service charges and the levy of special assessments for (sic) pay all or a part of such expense;

(5) Whether the proposed project and the proposed special taxing district conform to or conflict with the master plan of development for the county;

(6) His recommendations concerning the need and desirability for the requested project, the ability of the affected property to pay special taxes or to bear special assessments or both, and his opinion as to whether or not (i) all lots and parcels within the proposed district which are to be taxed or specially assessed will be specifically benefited by the proposed project, (ii) any prop-

erty which would be specially benefited by such project is not included in such district, and (iii) each lot or parcel in such district which is to be taxed or specially assessed will be specially benefited by such project in excess of the amount of such special taxes and special assessments to be levied thereon;

(7) If his recommendations under clause (6) are favorable to the creation of the requested special taxing district, his recommendations as to the levying of any special assessments against the benefited property, and an estimate of the amount to be assessed against each front foot or other unit of benefited property; (sic)

The county manager shall file such written report and recommendations, accompanied by an appropriate map and other pertinent data, with the clerk of the board at the earliest practicable date. Upon receipt of such report, the clerk shall immediately transmit a copy thereof to the mayor of the county.

(d) *Notice of public hearing.* If it shall appear to the board from such report of the county manager, and from such other investigations as the board may make or cause to be made, that the project petitioned for would be of special benefit to all property within the proposed district and that the total amount of the special taxes and special assessments to be levied would not be in excess of such special benefit, the board shall adopt a resolution fixing the place, date and

hour for a public hearing, which resolution shall set forth a copy of the petition, excluding signatures, and brief summaries of the report and recommendations of the county manager, including (but without limitation) his recommendations as to any additional territory which should be embraced within the proposed district. Notice of such public hearing, stating that a petition for the creation and establishment of a special taxing district under the provisions of this article has been filed with the clerk of the board and setting forth a brief description of the project petitioned for, the boundaries or other description sufficient to identify the property to be embraced in the proposed district, a brief summary of the report and recommendations of the county manager, the findings of the board as to special benefits and the lots and parcels to be specially assessed, and stating the place, date and hour fixed by the board for such public hearing, shall be:

(1) Published once a week for two consecutive weeks in some newspaper of general circulation within the county to be designated in the resolution;

(2) Posted in not less than five (5) public places within the proposed district;

(3) Mailed to all owners of taxable property within the boundaries of the proposed district, including any additional territory recommended by the county manager, whose names and addresses appear on the last preceding assessment roll for county taxes.

The first of such publications and such posting and mailing shall occur not less than fifteen (15) days prior to the date fixed for such hearing.

(e) Public hearing. At the time and place stated in such resolution, or to which an adjournment may be taken by the board, the board shall receive and hear objections of interested persons to the creation and establishment of the proposed district, the property to be embraced within the district, the project to be acquired, constructed, reconstructed or installed, or the levy of any special taxes or special assessments therefor, or to any defect in the petition or the proceedings theretofore taken, or which question any of the powers of the board under the provisions of this article, and the board may then or thereafter grant such petition with such modifications, if any, as it may deem advisable and which do not enlarge the boundaries of the district as set forth in the resolution mentioned in subdivision (d) of this section or change the general type or character of the project. All such objections shall be in writing, in person or by attorney, and filed with the board at or before the time or adjourned time of such hearing. Any objections not so made shall be considered as waived.

(f) *Resolution establishing district.* If the board shall, after such hearing, determine to grant the petition, either with or without modification, it shall adopt a resolution reciting the proceedings theretofore taken and providing for the creation and establishment of the district. Such resolution shall also set forth the following:

(1) The name or designation by which the district shall be known, such as "..... Special Taxing District in Metropolitan Dade County, Florida" or "Special Taxing District No. ..... in Metropolitan Dade County, Florida", or such other appropriate name as the board may determine.

(2) The boundaries of the district, or other description sufficient to identify the property to be embraced in the proposed district;

(3) A brief description of the project which is to be acquired, constructed, reconstructed or installed in the district;

(4) A declaration as to benefits and what part, if any, of the cost of the project is to be specially assessed; and

(5) A statement as to the method of financing, including estimates of:

(a) The amount of bonds of the district, if any, to be issued as hereinafter provided to pay the cost of the project,

(b) The amount required annually to be borne by the district or the county to pay the cost of maintaining, repairing and operating the project, and what percentage, if any, of such amount shall be specially assessed, and

(c) The amount, if any, to be derived annually from service charges or special assessments on benefited property or both.

Such resolution shall order the acquisition, construction, reconstruction or installation of the project under the provisions of this article upon moneys being made available therefor and shall set forth the location of the project and a description thereof by its material, nature, character and size. Such resolution may give any short and convenient designation to the project ordered thereby. Such resolution shall also set forth what part, if any, of the cost of the project which shall be borne by the special taxing district at large, the balance of such cost to be specially assessed.

If the board shall be of the opinion that, in lieu of the issuance of bonds as herein provided, an annual tax should be levied upon all property in the district subject to county taxation or that special assessments should be levied under the provisions of paragraph (17) of section 18-14 of this article, in order to furnish the services and facilities to be provided by the project for which the district is created, such resolution shall set forth the maximum amount of such annual tax not exceeding ten (10) mills on each dollar of the assessed valuation of such property, excluding that portion of the valuation of such property which is subject to homestead exemption, or shall set forth what part of the cost of maintaining, repairing and operating

the project shall be specially assessed in each year and the basis of the apportionment.

If the method of financing a project which is set forth in the resolution adopted under the provisions of this subsection creating and establishing a district shall be other than the issuance of bonds of the district under the provisions of sections 18-5 and 18-6 of this article or the levy of taxes under the provisions of section 18-7 of this article, the board shall provide that the resolution creating and establishing the district shall take effect when approved by a majority of the freeholders who are qualified electors residing in the district voting at an election to be called by the board and noticed and conducted and the result thereof determined and declared either in the manner provided for the issuance of bonds of a district or in such other manner, by mailed ballot or otherwise, as the board shall by resolution determine, provided, however, that in the event the proposed district shall encompass both unincorporated and incorporated areas of the county, then and in that event, the resolution creating and establishing the district shall take effect when approved by a majority vote of the freeholders who are qualified electors residing in the unincorporated area and also a majority vote of the freeholders who are qualified electors residing in each incorporated area in the district voting at an election to be called by the board and noticed and conducted and the results thereof determined and declared either in the manner provided for the issuance of bonds of a district or in

such other manner, by mailed ballot or otherwise, as the board shall by resolution determine, provided, further, that nothing contained in this paragraph shall affect the validity of any district heretofore created and established under the provisions of this article.

(g) Notwithstanding any of the foregoing provisions of this article a district may be created and established under the provisions of this article for the combined purpose of acquiring, constructing, reconstructing or installing both a water system and a sewerage system, and as applied to a district so created and established, the word project shall embrace both the water system and the sewerage system.

Nothing in this article shall be construed as prohibiting the creation and establishment of a district which shall include all or any portion of the territory of another district or districts theretofore created and established under the provisions of this article for the purpose of providing a public improvement of another class. (Ord. No. 60-7, § 4, 2-9-60; Ord. No. 64-26, § 1, 7-7-64; Ord. No. 64-50, § 1, 10-6-64; Ord. No. 65-59, § 1, 9-14-65)

Amendment note—Ord. No. 64-50, § 1, amended § 18-3(f) to add the last unnumbered paragraph. Ord. No. 65-59, § 1, further amended said unnumbered paragraph of subsection (f) by requiring the approval of freeholders of the district who are qualified electors. Previously, approval was required by the qualified electors of the district.

APPENDIX D

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR DADE COUNTY

No. 65C 2599

EDMOR PROPERTIES, INC., a Florida corporation,
Plaintiff,

vs.

METROPOLITAN DADE COUNTY, FLORIDA, a governmental subdivision of the State of Florida,
Defendant.

FINAL JUDGMENT

This cause came on for final hearing, and the Court has heard the testimony, considered the evidence and the arguments of counsel.

It affirmatively appears from the evidence that the charges for waste collection are related solely to the availability and furnishing of the waste collection and disposal service by Metro, and no part of the charge is used for the general revenues of Metropolitan Dade County; and it further appears that unoccupied premises may be exempted from such charges, in accordance with the provisions for the giving of notice by the property owner that the premises are untenanted or unoccupied, and that no charges against the plaintiff were assessed in the case of untenanted or unoccupied property, except in several instances in which the landowner failed to give notice to Metro as provided by the applicable charter provisions.

It is clear, also, that the charge for waste collection and disposal is not a tax but a charge for the availability and disposal of waste service, irrespective of the terminology used. (Turner, et al., v. Florida ex rel, Gruver, Fla. App. 3; Gleason v. Dade County, et al., Fla. App. 3). Nor, does the Court find any merit in the contention that Metro can only assess such charges after the creation of a special taxing district. It is apparent from a reading of the ordinance that Metro, as such, can levy a charge and provide a waste service, or alternatively could have proceeded with the establishment of special taxing districts, if the circumstances warrant it.

Since the availability of garbage and waste collection and disposal is provided for tenanted and occupied property, as well as for untenanted or unoccupied property, there is no denial of equal protection, and the mechanics of the ordinance satisfy the due process clause of the constitution. In short, the Court finds no constitutional infirmity in the ordinances under consideration, nor in their applicability to the plaintiff. It is, therefore,

ADJUDGED that plaintiff's complaint be, and it is hereby dismissed, at plaintiff's cost.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida, this 20th day of February, 1968.

/s/ Martin Sack
Judge

Copies: Carvajal and Lieberman
Thomas C. Britton

APPENDIX E

IN THE SUPREME COURT OF FLORIDA

DISTRICT COURT OF APPEAL, THIRD DISTRICT

JANUARY TERM, A. D. 1969

THURSDAY, MARCH 27, 1969

CASE NO. 38,310

EDMOR PROPERTIES, INC., ETC.,

Petitioner,

vs.

METROPOLITAN DADE COUNTY, FLORIDA, ETC.,

Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

A True Copy

TEST:
Sid J. White

SID J. WHITE
Clerk Supreme Court.

By Ella O'Neill Williams
Chief Deputy Clerk

CC: Hon. W. P. Carter
Hon. E. B. Leatherman
Messrs. Carvajal and Lieberman and
George D. Gold
Hon. Thomas C. Britton;
Attention: H. Jackson Dorney